

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Anderson	Team: Squad #11	CCRB Case #: 201902263	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 03/13/2019 3:00 PM	Location of Incident: [REDACTED]	Precinct: 79	18 Mo. SOL 9/13/2020	EO SOL 4/30/2021	
Date/Time CV Reported Wed, 03/13/2019 7:02 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Wed, 03/13/2019 7:02 PM		
<b>Complainant/Victim</b>	<b>Type</b>	<b>Home Address</b>			
[REDACTED]	[REDACTED]	[REDACTED]			
<b>Witness(es)</b>	<b>Home Address</b>				
[REDACTED]	[REDACTED]				
<b>Subject Officer(s)</b>	<b>Shield</b>	<b>TaxID</b>	<b>Command</b>		
1. POM Melvin Clarke	03927	955822	079 PCT		
<b>Witness Officer(s)</b>	<b>Shield No</b>	<b>Tax No</b>	<b>Cmd Name</b>		
1. SGT Mark Xylas	01685	948160	079 PCT		
2. POF Jena Leocadio	05460	956044	079 PCT		
<b>Officer(s)</b>	<b>Allegation</b>			<b>Investigator Recommendation</b>	
A.POM Melvin Clarke	Abuse: Police Officer Melvin Clarke stopped § 87(2)(b) [REDACTED]			[REDACTED]	
B.POM Melvin Clarke	Abuse: Police Officer Melvin Clarke failed to provide § 87(2)(b) [REDACTED] with a business card.			[REDACTED]	

### Case Summary

On March 13, 2019, § 87(2)(b) filed this complaint at the CCRB Board Meeting held at the NYCHA Van Dyke I Community Center, located at 392 Blake Avenue in Brooklyn.

On March 13, 2019, at approximately 3:00 p.m., § 87(2)(b) ran from his friends to avoid "birthday punches." PO Melvin Clarke, Sgt. Mark Xylas, and PO Jena Leocadio, all from the 79<sup>th</sup> Precinct, were in the vicinity and responding to a 911 call regarding a robbery when they saw § 87(2)(b) running. PO Clarke stopped § 87(2)(b) (**Allegation A -Abuse of Authority: Stop, § 87(2)(g)**). The officers investigated the reported robbery further, determined that no crime had occurred, and subsequently released § 87(2)(b) without arresting him or issuing him any summonses. PO Clarke allegedly did not issue a business card to § 87(2)(b) at the conclusion of their interaction (**Allegation B -Abuse of Authority: Failure to provide RTKA card, § 87(2)(g)**).

Body-Worn Camera (BWC) footage recorded by officers who later responded to the incident was obtained in this case.

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Melvin Clarke stopped § 87(2)(b)**  
**Allegation (B) Abuse of Authority: Police Officer Melvin Clarke failed to provide § 87(2)(b)**  
**with a business card.**

It is undisputed that PO Clarke stopped § 87(2)(b) who had been running in the vicinity of Fulton Street and Tompkins Avenue in Brooklyn, that he ultimately released him without summons or arrest, and that § 87(2)(b) did not receive a business card from PO Clarke.

§ 87(2)(b) stated to the CCRB (Board Review 01) that he, wearing a burgundy jacket, ran from five to six friends. Some of these friends chased him, and no other civilians on the block were running. § 87(2)(b) turned a corner, tripped, fell to the ground, and no longer saw his friends chasing him. PO Clarke then stopped § 87(2)(b). After § 87(2)(b) was released, he did not receive business cards from any officer, including PO Clarke.

PO Clarke (Board Review 02), Sgt. Xylas (Board Review 03), and PO Leocadio (Board Review 04) all stated to the CCRB that in their Anti-Crime assignment, they were patrolling in the vicinity of Fulton Street and Tompkins Avenue when a robbery at 73 Decatur Street, approximately one to two blocks away, was reported. The 911 call associated with the robbery was automated as the result of a silent alarm that had been activated, and PO Clarke stated that because of this, no physical descriptions of the alleged perpetrators were provided.

PO Clarke stated that Sgt. Xylas drove the officers' vehicle eastbound onto Decatur Street, where PO Clarke saw two black males, one of whom was § 87(2)(b) running westbound on Decatur Street. Sgt. Xylas stated that he first saw the males running fewer than 10 to 15 seconds after receiving the assignment, and PO Leocadio stated that she saw them running approximately 30 to 60 seconds after receiving the assignment. Both Sgt. Xylas and PO Leocadio stated that no other civilians were running in the area.

PO Clarke stated that he and PO Leocadio exited their vehicle, and PO Clarke instructed the males, who had passed the officers' vehicle and were less than one car length from him, to stop. PO Clarke issued this command because he wished to conduct an investigation into the report of a robbery in the area, because the two males were "suspicious" in that they ran away from the direction of the reported robbery location a short time after its having been reported, because no description of the suspects had been provided, because he wished to determine

whether the males were associated with the robbery complaint, and for no other reason. Neither male responded in any way, and both continued running.

PO Clarke ran towards the males and again instructed them to stop. § 87(2)(b) turned to look at PO Clarke and then continued running. PO Clarke had previously interacted with § 87(2)(b) in the vicinity of Fulton Street when officers had “talked to the kids” during their duties as “beat cops,” but he did not recognize § 87(2)(b) at this point in the incident. On the northwest corner of § 87(2)(b) PO Clarke stopped and handcuffed § 87(2)(b).

PO Clarke went to 73 Decatur Street, and, after being there for less than one minute, learned that an employee had inadvertently triggered the silent alarm. PO Clarke returned to the location of § 87(2)(b)'s detention, where Sgt. Xylas instructed PO Clarke to remove the handcuffs from § 87(2)(b) which he did. PO Clarke offered § 87(2)(b) a business card, which § 87(2)(b) stated he did not want. The entirety of the incident lasted approximately ten minutes.

The Event Information for § 87(2)(b) (Board Review 05) indicates that a robbery was reported at 15h35m3504s. This assignment was transmitted via division radio at 15h35m52s. At 15h36m15s, the location of 73 Decatur Street was provided. At 15h37m13s, the description of a black male wearing a burgundy jacket was provided. At 15h37m58s, two individuals were reported to be in custody. At 15h48m25s, it was reported that no robbery had occurred.

BWC footage that Sgt. Ryan Madhoo recorded (Board Review 06) begins with an embedded timestamp of 15h37m20s. In the opening frame, § 87(2)(b) is visible on the right side, wearing a burgundy jacket and apparently in police custody. § 87(2)(b) is escorted to a marked vehicle on the west side of Tompkins Avenue, facing northbound, with Awa Hair Braiding visible in the background.

§ 87(2)(g)

Officers are reasonable in pursuing an individual when the totality of circumstances contains their becoming aware of a crime and immediately seeing the individual running from the crime's origin. People v. Wingfield, 88 A.D.3d 537 (2011) (Board Review 07).

§ 87(2)(g)

§ 87(2)(g)

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 08).
- PO Clarke has been a member-of-service for five years, and this is the first CCRB complaint to which he has been a subject.

### **Mediation, Civil and Criminal Histories**

- Mediation was offered to § 87(2)(b). He did not respond to this offer and was unresponsive to subsequent attempts to determine his decision regarding mediation.
- On May 23, 2019, a Notice of Claim inquiry was sent to the NYC Office of the Comptroller, and its results will be added to the case file upon receipt (Board Review 09).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review 10).

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date